STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

TESTIMONY PRESENTED TO THE LABOR AND PUBLIC EMPLOYEES COMMITTEE

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Testimony regarding Raised House Bill 6876

AN ACT CONCERNING PUBLIC INSTITUTIONS OF HIGHER EDUCATION AND COLLECTIVE BARGAINING AGREEMENTS

Senator Gomes, Representative Tercyak and distinguished members of the Labor and Public Employees Committee, good afternoon and thank you for the opportunity to provide testimony regarding Raised House Bill 6876, An Act Concerning Public institutions of Higher Education and Collective Bargaining.

On its face, this Bill appears to codify the law as it has existed in this Country since the United State's Supreme Court handed down its 1974 decision in the case of *Alexander v. Gardner-Denver Co.*[1] In that case, the Court made it clear that a Labor Union could not waive an employee's rights to file or pursue a discrimination claim. No collective bargaining agreement between the State of Connecticut and State employees contains a provision contrary to the dictates of the *Gardner-Denver* decision. Since that has been the law of the land for more than 30 years one must inquire as to what is the motivation behind this legislation.

In 2008, the Second Circuit Court of Appeals issued the decision in *Richardson v. CHRO, et al.*[2] and upheld a provision in a labor agreement which provided an election of remedies, or choice of forums. In essence, the contract language, in that case, provided that if an employee elected to pursue their grievance in the anti-discrimination venue of CHRO, the Union would not be obligated to pursue the same matter to arbitration, under the terms of the labor agreement. It did not bar the employee from pursuing a discrimination complaint or require a waiver of the same; it simply provided the employee with a choice of where he or she wanted to pursue the claim, and at whose expense.

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[1] 415 U.S. 36, 45 (1974).

[2] *Richardson v. Commission on Human Rights & Opportunities et al.* Docket No.06-1474-cv (2nd Cir. 2008), *Cert. denied*, 2009.

In upholding the contract language as non-retaliatory or discriminatory, the Second Circuit observed that an election of remedies provision avoids "duplicative proceedings in two separate forums for adjudicating claims of discrimination without affecting a claimants work, working conditions or compensation, and more importantly, "It does not foreclose other avenues of relief, such as the right to pursue claims in federal court which was at issue in *Gardner-Denver*, or the right to pursue claims with non-CHRO bodies such as the EEOC." That Court added that, "It only requires the employee to make a concrete choice, at a specific time, between filing a state claim with CHRO and having the union pursue his or her grievance at arbitration."

Often employees will file a grievance, a CHRO complaint, a claim with the labor department, and even a lawsuit in any venue that entertains the employee's complaints. The employer is forced to retain legal counsel to defend against the various claims and lawsuit, devote enormous amounts of time and man-power in preparing for and defending the employer's case in the various venues. In reality, it is all over the same issue. If the employer, the employee, and the Unions are willing to resolve everything, at one time, in one place, why shouldn't the parties be allowed to do that? If, however, the parties agree to let the employee elect his or her choice of remedies, what is wrong with that?

This legislation encroaches on the collective bargaining process. During negotiations the parties engage in arm-length negotiations until they reach an agreement or impasse. If they cannot reach an agreement on any issue, that issue may be resolved in binding interest arbitration. In that case, the Arbitrator selects the most reasonable last best offer of either party after considering certain statutory factors. This legislation deprives the parties of reaching an agreement on an issue that the Second Circuit Court of Appeals has said made sense. If a Union does not wish to include such a provision in its collective bargaining agreement, the parties can let an interest arbitrator decide on its inclusion, along with every other disputed issue. That is the appropriate placé for that question to be resolved. It should not be hoisted upon the parties by the Legislature by making it an illegal subject of bargaining.

Given the fact that one cannot now, nor has a labor union been able to prospectively waive an employee's right to pursue a discrimination complaint since the Supreme Court's pronouncement in *Gardner-Denver*, this legislation is at its best, unnecessary.